

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 9, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1198

Introduced by Assembly Member Dutton

February 21, 2003

An act to amend Section 1043 of the Evidence Code, and to amend Section 832.8 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1198, as amended, Dutton. Peace officers: records.

Existing law provides that when discovery or disclosure is sought of peace or custodial officer personnel records or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records, and that upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

This bill would in addition provide that if the governmental agency is not the employer of the individual, the governmental agency shall immediately notify the last known peace officer or custodial officer employer of the individual when direct notification is not possible and the individual's location is unknown.

This bill would provide that notwithstanding any other statute, these discovery procedures would be used for the discovery or disclosure of the information.

By imposing additional duties on local governmental agencies in connection with peace officer personnel records this bill would impose a state-mandated local program.

Existing law defines “personnel records” for these described purposes relative to peace officers and custodial officers, and their employing agencies.

This bill would extend the definition to include records and other specified information relative to former peace officers and former custodial officers and to include other governmental agencies authorized to maintain these records.

By imposing additional duties on local governmental agencies in connection with peace officer personnel records this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1043 of the Evidence Code is amended
2 to read:
3 1043. (a) Notwithstanding any other statute, in any case in
4 which discovery or disclosure is sought of peace or custodial
5 officer personnel records as defined in Section 832.8 of the Penal
6 Code, or records maintained pursuant to Section 832.5 of the Penal
7 Code or information from those records, the party seeking the
8 discovery or disclosure shall file a written motion with the
9 appropriate court or administrative body upon written notice to the
10 governmental agency which has custody and control of the
11 records. The written notice shall be given at the times prescribed



1 by subdivision (b) of Section 1005 of the Code of Civil Procedure.
2 Upon receipt of the notice, if the individual's location is known to
3 the governmental agency served, the government agency shall
4 immediately notify the individual whose records are sought. If the
5 governmental agency is not the employer of the individual, the
6 governmental agency shall immediately notify the last known
7 peace officer or custodial officer employer of the individual when
8 direct notification is not possible and the individual's location is
9 unknown.

10 (b) The motion shall include all of the following:

11 (1) Identification of the proceeding in which discovery or
12 disclosure is sought, the party seeking discovery or disclosure, the
13 peace or custodial officer whose records are sought, the
14 governmental agency which has custody and control of the
15 records, and the time and place at which the motion for discovery
16 or disclosure shall be heard.

17 (2) A description of the type of records or information sought.

18 (3) Affidavits showing good cause for the discovery or
19 disclosure sought, setting forth the materiality thereof to the
20 subject matter involved in the pending litigation and stating upon
21 reasonable belief that the governmental agency identified has the
22 records or information from the records.

23 (c) No hearing upon a motion for discovery or disclosure shall
24 be held without full compliance with the notice provisions of this
25 section except upon a showing by the moving party of good cause
26 for noncompliance, or upon a waiver of the hearing by the
27 governmental agency identified as having the records.

28 SEC. 2. Section 832.8 of the Penal Code is amended to read:

29 832.8. As used in Section 832.7 of this code, or Section 1043
30 of the Evidence Code, "personnel records" means any peace
31 officer, former peace officer, custodial officer, or former custodial
32 officer record maintained by the officer's current or former
33 employing agencies, or by the Commission on Peace Officer
34 Standards and Training identified by the officer's name or social
35 security number, and containing records relating to any of the
36 following:

37 (a) Personal data, including, but not limited to, ~~identification~~,
38 marital status, family members, education, training, professional
39 certificates, employment history, home addresses, or similar
40 information.

1 (b) Medical history.

2 (c) Election of employee benefits.

3 (d) Employee advancement, appraisal, or discipline.

4 (e) Complaints, or investigations of complaints, concerning an
5 event or transaction in which he or she participated, or which he
6 or she perceived, and pertaining to the manner in which he or she
7 performed his or her duties.

8 (f) Any other information the disclosure of which would
9 constitute an unwarranted invasion of personal privacy.

10 ~~SEC. 5.~~

11 *SEC. 3.* Notwithstanding Section 17610 of the Government
12 Code, if the Commission on State Mandates determines that this
13 act contains costs mandated by the state, reimbursement to local
14 agencies and school districts for those costs shall be made pursuant
15 to Part 7 (commencing with Section 17500) of Division 4 of Title
16 2 of the Government Code. If the statewide cost of the claim for
17 reimbursement does not exceed one million dollars (\$1,000,000),
18 reimbursement shall be made from the State Mandates Claims
19 Fund.

